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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 16 April 2003 from the Chargé d'affaires a.i. of the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

On instructions from my Government, I have the honour to submit the report of South Africa pursuant to paragraph 6 of Security Council resolution 1455 (2003) to the Security Council Committee established pursuant to resolution 1267 (1999) (see annex).

The Government of South Africa wishes to convey to the Committee its support for and cooperation with the ongoing work of the Committee.

I should be grateful if you would circulate the present letter and the enclosed report as a document of the Security Council.

(*Signed*) Jeanette **Ndhlovu**
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Annex to the letter dated 16 April 2003 from the Chargé d'affaires a.i. of the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

Report of South Africa pursuant to paragraph 6 of Security Council resolution 1455 (2003)*

Introduction

On 16 April 2002, the South African Government submitted a comprehensive report to the Security Council Committee established pursuant to resolution 1267 on the measures taken to implement the provisions of resolutions 1267 (1999), 1333 (2002) and 1390 (2002). (See document S/AC.37/2002/12).

This report covers information and the measures on which Member States are required to submit an updated report to the 1267 Committee, as required in paragraph 6 of resolution 1455 (2003). As such it should be read in conjunction with the information already provided to the Committee in the South African Government's report of 16 April 2002.

The format and details of the individuals and entities that were listed by the UN Security Council 1267 Committee remains an obstacle to the full implementation of the relevant provisions of resolutions 1390 (2002) and 1455 (2003). In its present form, the list makes it difficult for implementing agencies to make positive identifications. To make the list more effective, additional information in respect of individuals listed - including full names, aliases, alternative spellings of their names and aliases, identification and/or passport numbers etc. - should be provided to facilitate positive identification.

The South African Security Community is also presently conducting investigations under certain provisions of the resolutions mentioned above, whose contents may not be divulged in order not to compromise investigations.

* The response to question 3 is available for consultation in the files of the Secretariat.

Additional information submitted regarding the implementation of operative paragraph 2 (a) to (c) of Security Council resolution 1390 (2002)

Question 1: What legislative and/or administrative measures have been taken to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of resolution 1390 (2002), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory?

Response:

The South African Government provided a comprehensive report (which has been published as document S/AC.37/2002/12) on the legislative and/or administrative measures to give effect to the measures contained in paragraph 2 (a) of resolution 1390 (2002). Updated information is provided in respect of the following:

A. Legislation:

1(a) Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)

The Financial Intelligence Centre (FIC) Act was adopted by the South African Parliament on 6 November 2001 and was assented to by the President on 28 November 2001. Certain provisions, including those establishing the Financial Intelligence Centre, took effect on 31 January 2002. A process is currently underway to draft regulations that will support the operation of the other provisions of this Act. It is envisaged that the majority of these provisions, which include provisions concerning the reporting of suspicious and unusual transactions, will take effect during the course of this year.

The Act draws extensively on international best practice and provides the South African Government with the tools to combat all money laundering activities, including activities related to acts of terrorism. It sets up an anti-money laundering regime which encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes. To this extent, the FIC Act complements the Prevention of Organised Crime Act of 1998. The Act is attached as Addendum F to South

Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

The regulations under the Financial Intelligence Centre Act, 2001, were published in the Government Gazette on 20 December 2002. These regulations provide the detail concerning the duties of client identification, record-keeping, reporting of information and implementing internal rules which are created by the Financial Intelligence Centre Act, 2001.

The regulations relating to the reporting of suspicious and unusual transactions took effect on 3 February 2003. On this date the sections of the Financial Intelligence Centre Act, 2001 requiring suspicious and unusual transactions to be reported to the Financial Intelligence Centre and enabling the Financial Intelligence Centre to perform its functions in respect of such reports also took effect. As a result the Financial Intelligence Centre is now functioning in an operational capacity, receiving, processing, analysing and disseminating information on suspicious and unusual transactions. A further consequence is that reports on suspicious transactions are no longer made to the South African Police Services under the Prevention of Organised Crime Act, 1998, but rather to the FIC in terms of the Financial Intelligence Centre Act.

No reports concerning the Taliban/Al-Qaeda or any individuals or entities associated with them have been made to the Financial Intelligence Centre since 3 February 2003 when the obligation under the Financial Intelligence Centre Act, 2001, to report suspicious and unusual transactions to the Centre took effect. Likewise no such reports were made to the South African Police Service in the period preceding 3 February 2003 when such reports were made to the South African Police Service under the Prevention of Organised Crime Act, 1998.

The sections of the Financial Intelligence Centre Act, 2001 and the regulations dealing with the duties of client identification, record-keeping and implementing internal rules will take effect on 30 June 2003.

1(b) Anti-Terrorism Bill

The South African Department of Safety and Security initiated a review of the South African law dealing with terrorism. This review resulted in a draft Anti-Terrorism Bill which Cabinet approved for introduction to Parliament in November 2002. On 29 January 2003, the parliamentary Portfolio Committee on Safety and Security in the National Assembly was given its first briefing on the Bill. It is envisaged that the Portfolio Committee will start its deliberations on the Bill during March 2003.

The text of the draft Bill is presently available at:

- The South African Law Commission's website at:
  http://www.server.law.wits.ac.za/salc/report/report.html

- Unwembi's Resource of South African Government Information at: http://www.polity.org.za/govdocs/bills/2002/index.html

- The South African Police Service's website at: http://www.saps.org.za/legis/index.htm#anti-terror

- The South African Parliament's website at: http://www.pmg.org.za/bills/020902terrorismbill.html

One of the measures contained in the Anti-Terrorism Bill is the authority of the Minister for Safety and Security, by notice in the Government Gazette, to declare an organisation to be a proscribed organisation, if he or she is satisfied on reasonable grounds, inter alia, that the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation. The Bill also criminalises the contributing to the activities of a terrorist organisation, which includes, inter alia, -

> providing, receiving or recruiting a person to receive training;
>
> providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist organisation;
>
> collecting, providing, or making available property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation;
>
> using property on behalf of such an organisation;
>
> possessing property intending that it be used on behalf of such an organisation;

The Bill also criminalises the dealing in property for terrorist purposes. It provides that any person, whether within or outside the Republic who knowingly –

> (a) deals directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist organisation;
>
> (b) enters into or facilitates any transaction in respect of property referred to in paragraph (a); or
>
> (c) provides any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist organisation,
>
> is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 15 years.

The Bill also creates an elaborate procedure for search, seizure and forfeiture of such property.

B. Conventions:

In paragraph 1(e) of report S/AC.37.2002/12, on the Transnational Organised Crime Convention, it is envisaged that the Convention and its Protocols will be ratified by Parliament during 2003.

In paragraph 1 (f), referring to the International Convention for the Suppressing of the Financing of Terrorism, it should be noted that the Minister of Foreign Affairs signed the Instrument of Ratification for this Convention on 27 March 2003.

The Minister of Foreign Affairs signed the Instrument of Ratification for the International Convention for the Suppression of Terrorist Bombings on 4 April 2003.

Arrangements are being made for the deposition of these instruments of ratification with the Secretary-General of the United Nations.

The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, and the International Convention Against the Taking of Hostages are currently going through the constitutional processes for their ratification.

C. Administrative Action:

Amendments have been made to paragraph 1 (g) regarding the imposition of financial restrictions imposed against the Taliban, Al-Qaeda and associated groups and entities. Since the submission of South Africa's National Report on resolution 1390 (2002)(S/AC/37/2002/12), three additional Exchange Control Circulars have been circulated advising all authorised dealers that, due to UN sanctions, they are not allowed to make any funds and/or financial or economic resources available to the Taliban, as well as to Usama bin Laden and individuals associated with him. The Exchange Control Circulars have also requested all Authorised Dealers in foreign exchange to report any facilities or assets of this nature that may have been in place before the sanctions were imposed, as well as any future attempts by the private sector to enter into transactions with the prohibited parties and persons. The Exchange Control Circulars in question are No D.358 of 4 April 2002, No D.368 of 20 August 2002 and No D.374 of 28 January 2003. These additional Exchange Control Circulars, D.358, D.368 and D.374 contained the details of the individuals and entities that were listed by the Security Council Committee on Afghanistan.

All reports received to date indicate that the authorised dealers do not have any assets of the individuals or entities stipulated in the lists of the Sanctions Committee on Afghanistan on their books, or under their control, and that no facilities were granted to them.

1(a) Financial restrictions imposed against organisations, entities and individuals identified as being associated with terrorist acts or terrorist organisations

Regarding the information contained in paragraph 1 in the South African Government's report of 16 April 2002 (document S/AC.37/2002/12), it should be noted that the information that was to be supplied to the Registrar of Banks by 28 March 2002 and thereafter on a quarterly basis, is now provided on a bi-annual basis.

The following developments on the Cross-Border Foreign Exchange Transaction Reporting System can be reported since the submission of Report S/AC.37/2002/12.

The Cross-Border Foreign Exchange Transaction Reporting System was introduced on 1 April 2001. The International Monetary Fund, in its publication on reporting systems, pointed out, that in view of a movement towards a global marketplace, there is clearly a need for an international standard to be adopted for central bank reporting. Such a standard, known as EDIFACT has been developed under auspices of the United Nations. South Africa has decided to align with the worldwide trend by adopting the EDIFACT standard. The purpose of the Cross-Border Foreign Exchange Transaction Reporting System is to provide relevant, accurate and timeous information on cross-border transactions and payment flows.

It requires all cross-border transactions to be reported. The Reporting System is based on the principle of "same source" reporting which requires the extraction of relevant data from the Authorised Dealers' accounting processes e.g. nostro/vostro administration. The completion of, *inter alia*, the surname and name of an individual or entity is a mandatory requirement. In the case of an individual, the surname of the individual should be supplied and in the case of an entity, the registered name of the entity must be supplied. It is therefore possible by continuous data mining exercises to determine whether any cross border transactions concluded by listed individuals and entities have taken place. Excon is in the process of introducing enhanced data mining software that would streamline the identification process. To date approximately 12 million transactions have been captured on the system. Investigations, including on-site visits, have been conducted by Excon to verify possible transactions involving individuals and entities listed by the United Nations Security Council Committee. None of the individuals or entities was positively identified to date.

Excon is providing assistance to its neighbouring territories i.e. Namibia, Swaziland, Lesotho and Zimbabwe to implement similar systems.

All transactions that could potentially be construed as a contravention of the resolutions are investigated intensively in terms of origins of funds, ownership, trail of funds and recipients thereof.

Research is done on a continuous basis to trace any transactions alleged to be involved in the financing of terrorist acts. The results are communicated to the South African Police

Service, who then conducts an investigation into the matter. The authorisation process at the Exchange Control Department includes an electronic system that will automatically prevent approval of applications where any of the names listed in the Circulars mentioned above are involved. The Exchange Control Department has received no applications of this nature to date.

Question 2: What measures have been taken to prevent the entry into or transit through South African territory of the individuals referred to in the list mentioned in paragraph 2 of resolution 1390 (2002)?

Response:

Paragraph 2 (c) "Implementing Mechanisms" of South Africa's Report S/AC.37/2002/12 outlined the activities of the National Joint Operational Committee (NATJOC).

The existence of NATJOC was terminated in 2002 for practical reasons. It was decided that in order to have more effective and targeted co-operation, liaison on matters of counter-terrorism would take place between those role players directly involved as an when required.

Please note that the response to Question 3 is contained in a Confidential Annex.

Question 4: What measures have been taken to prevent the direct or indirect supply, sale and transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities?

Response:

The information pertaining to Question 4 in Report S/AC/37/2002/12 regarding the direct or indirect supply of arms and related materiel to the individuals, groups, undertakings and entities specified by resolution 1390 (2002) remains unchanged.

There are currently investigations being conducted in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), whose contents cannot be divulged at the present time in order not to compromise investigations.

4(f) Civil Aviation Offences Act, 1972 (Act No. 10 of 1972)

It should be noted that the Minister of Transport on 18 March 2002 approved the interim National Safety Plan (NSP) mentioned in paragraph 4 (f) of Report S/AC.37/2002/12.

Question 5: Updated information regarding all related investigations and enforcement actions, including a comprehensive summary of frozen assets of listed individuals and entities within Member State territories.

Response:

The South African Security Community is presently conducting investigations under certain provisions of resolutions 1267 (1999), 1333 (2000) and 1390 (2001), whose contents may not be divulged in order not to compromise investigations underway.